

23/02157/APP
11th December 2023

Vary condition 19 of 19/01080/APP to permit construction of footpath prior to occupation of any dwelling unit on Land At St Andrews Terrace Lhanbryde Moray for Springfield Properties PLC

Comments:

- The application is reported to Committee as it is a major application. Given that this is an application under section 42 of the planning act to vary the terms of an existing consent the pre application requirements for major applications was not required.
- The application was advertised for Neighbour Notification.
- No representations have been received.

Procedure:

None.

Recommendation

Grant Planning Permission - Subject to the following:

Conditions/Reasons

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No works in connection with the development hereby approved shall commence unless an archaeological Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Council, as planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI will be provided throughout the implementation of the programme of archaeological works. Should the

archaeological works reveal the need for post excavation analysis the development hereby approved shall not be occupied unless a Post-Excavation Research Design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the Council, as planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

3. No development shall commence until full details (including scaled elevation drawings) of the proposed 'key buildings' identified in the placemaking statement received on 25 November 2020 and drawing LH01_PL_07 have been submitted to and approved in writing by the Council, as Planning Authority. For the avoidance of doubt the key buildings shall reflect the house types approved as part of the application. Thereafter development shall not proceed except in accordance with the approved details.

Reason: To ensure that the proposals harmonise with the character of the development and the wider area and because no such details were included with the application.

4. Notwithstanding the submitted landscaping plans no development shall commence until additional plans have been submitted to and approved in writing by the Council, as planning authority incorporating all the currently proposed details along with all measures identified in the submitted placemaking statement received on 25 November 2020 and the biodiversity plan received on 2 October. For the avoidance of doubt the revised plans shall include:
 - Details of all measures to provide distinctive planting in each character area;
 - Full specification for the proposed woodland paths;
 - A full maintenance schedule including woodland areas;
 - Full details (scaled drawings 1:50) of the proposed entrance walls which shall be constructed in stone;
 - Written details of sizes of trees and shrub planting to be semi-mature plants and not heavy standard as noted on the submitted drawings;
 - Details of the type and location of all proposed bat and bird boxes and timing of provision; and
 - A method statement for the creation of the proposed wetland areas and a maintenance schedule.

Thereafter all landscaping works shall be carried out in accordance with the approved details. Unless otherwise agreed as part of the approved details all planting, seeding or turfing shall be carried out in the first planting season following the first occupation of any of the units hereby approved. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless otherwise approved by the Council, as Planning Authority.

Reason: To ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area and because no such information was included with the application.

5. No development shall commence until details of the landscaping treatment along the trunk road boundary has been submitted to, and approved by, the Council, as Planning Authority, after consultation with Transport Scotland. Thereafter the approved details shall be implemented in full prior to the first occupation of any part of the development.

Reason: To ensure that there will be no distraction to drivers on the trunk road, and that the safety of the traffic on the trunk road will not be diminished.

6. No development shall commence until a Peat Management Plan, demonstrating avoidance of areas of deep peat and details of quantities and appropriate reuse of excavated peat and any mitigation or restoration proposals, has been submitted to and approved in writing by the Council, as Planning Authority in consultation with SEPA, and thereafter shall be implemented in full on site.

Reason: In order to minimise disturbance of peat and ensure the appropriate reuse and management of peat on site.

7. No development shall commence until details of measures to protect and enhance the M9 habitat (as identified in the submitted Lhanbryde Development Site: Badger and GWDTE survey by Highland Ecology and Development Services) have been submitted to and approved in writing by the Council, as Planning Authority in consultation with SEPA. Thereafter development shall not proceed except in accordance with these approved details.

Reason: To protect the water environment.

8. No development shall commence until a Badger Mitigation Plan has been submitted to and approved in writing by the Council, as Planning Authority. For the avoidance of doubt the plan shall allow for the channelling of badgers around the site. The construction of the development shall be implemented in accordance with the approved Badger Mitigation Plan.

Reason: To minimise the potential conflict with badgers during construction.

9. As part of the development hereby approved, the accessible housing units shall be provided in line with the detail in accordance with the Moray Council's DP2 Policy Guidance Note on Accessible Housing. Prior to any development commencing, a compliance statement, along with detailed floor plans at a suitable scale, which demonstrate compliance with the Policy Guidance, shall be submitted to and approved in writing by the Council, as Planning Authority. Thereafter, the accommodation as identified shall, at all times, remain as accessible housing and remain capable for adaptation for accessible housing needs unless otherwise agreed with the Council, as Planning Authority. For the avoidance of doubt 10% of the private housing units hereby approved shall be

accessible units. Furthermore, evidence must be provided that level access to each unit can be achieved from parking to an external door within 15m.

Reason: To ensure an acceptable form of development in terms of the required provision and delivery of accessible housing within the site as required and defined in terms of current planning policy and associated supplementary planning guidance.

10. The 19 units identified as affordable housing on approved plan LH01_PL_01 revision L shall only be used for affordable housing purposes in accordance with the agreement(s) reached between the applicant/developer and Moray Council and/or any registered social landlord (e.g. housing association or similar) to enable the long term delivery of affordable housing on this site; and no development shall commence until details of the agreement(s) to confirm the arrangements for the delivery of the proposed affordable accommodation hereby approved shall be submitted to and approved in writing by the Council, as Planning Authority.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the required provision and delivery of the affordable housing accommodation proposed for this site wherein the benefits of such provision are passed on to serve the community in future years.

11. No trees other than those identified for removal in the submitted Arboricultural Impact Assessment/Method Statement by Urban-Arb Arboricultural Consultants and Tree Protection Plan rev B sheets 1-3 shall be removed without the prior written approval of the Council, as planning authority.

Reason: In order to ensure tree removal is adequately controlled.

12. No development shall commence until the tree protection measures detailed in the submitted Arboricultural Impact Assessment/Method Statement by Urban-Arb Arboricultural and Tree Protection Plan rev B sheets 1-3 have been implemented in full.

Reason: In order to ensure adequate measures to protect retained trees are in place.

13. Notwithstanding submitted drawing 1706.16352 (ExampleDesign_SpringfieldP) no development shall commence until full details (scaled drawing 1:100 and equipment specification schedule) of an equipped play area as identified on approved plan LH01_PL_01 revision L including the maintenance arrangements have been submitted to and approved in writing by the Council, as Planning Authority. The equipped play area shall make provision for all-abilities access including in relation to the surface finish, play equipment and seating. The equipped play area shall be provided in accordance with the approved details and be available for use prior to the occupation of the 25th unit hereby approved.

Thereafter the play area shall be maintained in accordance with the approved maintenance arrangements.

Reason: To ensure the adequate provision of an equipped play area and its future maintenance.

14. No development shall commence until details confirming the installation of fibre broadband connection for each residential unit (to be provided prior to occupation of each unit) have been submitted to and approved in writing by the Council, as Planning Authority. Thereafter, the development shall be implemented in accordance with these approved details, unless otherwise agreed in writing by the Council, as Planning Authority.

Reason: To ensure the residential units hereby approved are served by appropriate high speed internet connections, in accordance with policy PP3 - Infrastructure and Services of the Moray Local Development Plan 2020.

15. No development shall commence until details (scaled drawings) of a safe and suitable connection from the site to the existing cycle path on the north side of St Andrews Road have been submitted to and approved in writing by the Council, as Planning Authority. The connection shall be provided prior to the completion of any house or flat.

Reason: To ensure adequate connectivity to and through the site.

16. Notwithstanding the details submitted within the Transport Assessment on Drawing No 180980-900 (which is not accepted), no development shall commence until the following details have been submitted and approved in writing by the Council, as Planning Authority in Consultation with the Roads Authority:
- i. Details (Plan 1:500) for two new bus stops (one in each direction) on St Andrews Road (including road markings or laybys as required, shelters and flags); and
 - ii. A Road Safety Audit (Stage 1/2) which has been carried out in accordance with the requirements set out in the Design Manual for Roads and Bridges taking account of the proposed bus stops and site access. The proposals shall be revised to take account of any agreed mitigation and thereafter the bus stops and any other agreed mitigation required shall be provided in accordance with the approved details prior to the completion of any house or flat.

Reason: To ensure adequate provision is made for accessibility to public transport, the provision of details lacking from the submission and in the interests of road safety.

17. No development shall commence until details comprising a Root Protection Plan have been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The root protection measures shall be installed in accordance with the agreed Root Protection Plan. No trees shall be planted within 5.0m of the edge of the public road carriageway unless agreed root protection is provided.

Reason: To prevent root interference that could compromise the public road carriageway (and the utilities contained therein) thereby ensuring acceptable infrastructure at the development access, in the interests of road safety.

18. Notwithstanding the parking details submitted on the Parking Provision EV Charging Drawings LH01_PL_ 8, 9 and 10 (which are not accepted), no development shall commence until the following details have been submitted for approval by the Council, as Planning Authority in consultation with the Roads Authority:
- Details (Plan 1:200) showing the provision of electric vehicle charging infrastructure at a rate of 1 per flat for Plots 3-10 and parking spaces accessible within 5 metres.
 - Statement/specifications to confirm that the EV charging supply and cabling provision for each plot will be suitable for the connection of a 7Kw 'Fast' type charging unit as a minimum.
 - Design/specifications for the proposed mounting/installations to be provided for any future EV charging points which shall not be mounted on a wall/within a garage.

Thereafter the development shall be completed in accordance with the approved details, the parking and EV charging provision associated with each house or flat shall be completed prior to occupation and shall be maintained and available for this purpose unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: In the interests of an acceptable form of development and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking from the submission.

19. Notwithstanding the parking details shown on plan LH01_PL_01 revision L, no development shall commence until the following details have been submitted for approval by the Council, as Planning Authority in consultation with the Roads Authority:
- i. a plan (1:500) showing the provision of 3 parking spaces for plot 12 (Type F); and
 - ii. a plan showing 2 additional lay-by type parking spaces at a location to be agreed on the north side of the site access road between Plot 22 and the 'Kickabout area' (as shown on Drawing LH01_PL_05).

Thereafter the development shall be completed in accordance with the approved details and parking provision associated with each house or flat shall be completed prior to the occupation of said house or flat and maintained for this purpose unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: Submission of additional information to ensure adequate provision is made for car parking within the development, and to ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

20. Prior to the first occupation of any house or flat the footway on the south of St Andrews Road connecting the site access with the existing footway to the east of the site must be completed and available for use by the public.

Reason: To ensure adequate provision for non-vehicular road users in the interests of road safety.

21. A visibility splay of 4.5m x 160m to the west and 4.5m x 90m to the right (as shown on Drawing No. LH01-ENG-700 Rev) shall be provided in accordance with the approved drawing prior to any works commencing on the access (except for those works associated with the provision of the visibility splay); and
- i. a schedule of maintenance for the visibility splay shall be provided prior to the access becoming operational; and
 - ii. the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26m metres above the level of the carriageway in accordance with the agreed schedule of maintenance, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

22. Driveways over service verges shall be constructed to accommodate vehicles and shall be surfaced with bituminous macadam unless otherwise agreed with the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To ensure acceptable infrastructure is provided at the property accesses.

23. No works shall commence on site until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The CTMP shall include as a minimum the following information:

- Details of any temporary construction access from the public road;
- Duration of works;
- Construction programme;
- Details of construction traffic routes to the site;
- Measures to be put in place to prevent material being deposited on the public road, monitoring and arrangements to clean the road if necessary;
- Traffic management measures to be put in place during works including any specific instructions to drivers;
- Parking provision for site staff;
- Drop-off and turning provision for delivery vehicles to ensure entry and exit in a forward gear;
- Hours of operation and restrictions during school arrival and departure times from the existing housing; and
- Arrangements for providing residents with information on works, points of contact for liaison and emergencies.

Thereafter, the development works shall proceed in accordance with the approved details, unless otherwise approved in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site, road safety and the amenity of the area/adjacent properties.

24. The development shall meet the following requirements:

- a) Except for the formation of a single access route, there should be no built development - including any land-raising - within the area shown as being at risk of flooding in Figure 10 (p28) of the Flood Risk Assessment (1601 - Lhanbryde, Moray, FRA Aug 19) by Kaya Consulting. (Note SEPA advises that while there should be no built development including land raising, this area should be sustainably managed).
- b) No development shall commence until the detailed design of the access route, including provision of compensatory storage and flood relief culverts has been agreed in writing with the Council, as Planning Authority in consultation with SEPA and thereafter the agreed details shall be implemented in full on site.

Reason: To protect people and property from flood risk in line with Scottish Planning Policy.

25. Prior to the first occupation of any unit hereby approved the acoustic barrier shall be installed at the location as described in Figure 4, page 11 of the Noise Impact Assessment supporting document by Charlie Fleming Associates Ltd, 5 Saltpans, Charlestown, Fife KY11 3EB, dated 20 September 2019, and titled "Report on Road Traffic Sound For Springfield Properties At St Andrews Road, Lhanbryde, Elgin, Moray". Thereafter, the approved barrier (or a suitable equivalent approved in writing by the Council, as Planning Authority in consultation with the Environmental Health Authority and the Trunk Roads Authority) shall be retained during the lifetime of the development.

Reason: To prevent noise nuisance.

26. Prior to the first occupation of any units defined as plots 71-77 hereby approved a post and wire fence shall be provided along the eastern boundary of the site.

Reason: In the interests of the amenity of the surrounding area.

27. Notwithstanding the details noted on approved drawings 2016/D/PL/01 (D type), 2016FF_901 (FF type) and 2019AA_901 the feature cladding on each elevation of these houses shall have a vertical orientation rather than a horizontal orientation as detailed on the plans.

Reason: In order to ensure all elements of the development harmonise regardless of tenure.

28. Notwithstanding the details noted in the placemaking statement received on 25 November and the material conditions drawing reference LH01_PL_04 revision F, the render colour for the Coxton View Character Areas identified in the foregoing shall not be white and shall instead be altered to cream or another pale colour to be agreed in writing with the Council, as Planning Authority prior to the commencement of any unit in this character area.

Reason: In order to create a strong sense of place.

29. All surface water drainage proposals shall be in accordance with the submitted report 'Drainage Strategy Report, St Andrews Road, Lhanbryde'. All measures for the management of surface water shall be implemented in full prior to the first occupation of any residential unit hereby approved. Maintenance shall be in accordance with the measures set out in the maintenance document received on 23 November 2020.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

30. There shall be no drainage connections to the trunk road drainage system.

Reason: To ensure that the efficiency of the existing trunk road drainage network is not affected.

31. No development shall commence until details of the proposed foul pumping station including elevations of all works, means of enclosures and associated plant (including noise levels) have been submitted to, and approved by the Council, as Planning Authority, in consultation with Environmental Health. Thereafter the approved details shall be implemented in full prior to the first occupation of any part of the development.

Reason: To ensure an acceptable form of development as these details are lacking from the application.

Reason(s) for Decision

The Council's reason(s) for making this decision are:-

The proposal accords with the provisions of the development plan and there are no material considerations that indicate otherwise.

List of Informatives:

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

A Building Warrant will be required for the proposals. Should you require further assistance please contact the Building Standards Duty Officer between 2pm and 4pm or telephone on 03001234561. No appointment is necessary. Alternatively e-

mail buildingstandards@moray.gov.uk

The development subject to this notice falls within a highlighted proximity of a mains gas pipe which is considered a major hazard. The applicant/ agent/ developer is strongly advised to contact the pipeline operator PRIOR to ANY works being undertaken pursuant to the permission granted/confirmed by this notice.

Address is:

Southern Gas Networks Plc

SGN Plant Location Team

95 Kilbirnie Street

Glasgow

G5 8JD

Tel: 01414 184093 OR 0845 0703497

Search online at:

www.linesearchbeforeyoudig.co.uk

SGN personnel will contact you accordingly.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Electric Vehicle (EV) charging provision must be provided in accordance with the current Moray Local Development Plan (MLDP 2020) policy and supplementary guidance requirements.

Planning consent does not carry with it the right to carry out works within the public road boundary.

The Transportation Manager must always be contacted before any works commence. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

Before commencing development, the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads. The applicant will be required to provide technical information, including drawings and drainage calculations. Advice on this matter can be obtained from the Moray Council web site at

http://www.moray.gov.uk/moray_standard/page_65638.html

Before starting any work on the existing public road, the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing

transport.develop@moray.gov.uk

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

Street lighting will be required as part of the development proposal.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

See attached consultation response dated 12 September 2019.

Authorisation is required under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) to carry out engineering works in or in the vicinity of inland surface waters (other than groundwater) or wetlands. Inland water means all standing or flowing water on the surface of the land (e.g. rivers, lochs, canals, reservoirs).

As advised above a Controlled Activities Regulations (CAR) construction site licence will be required for management of surface water run-off from this construction site. See SEPA's Sector Specific Guidance: Construction Sites (WAT-SG-75) for details. The applicant should ensure sufficient space is available for construction drainage mitigation measures. Site design may be affected by pollution prevention requirements and hence we strongly encourage the applicant to engage in pre-CAR application discussions with a member of the regulatory services team in your local SEPA office, contact details below.

Please also refer to Guidance for Pollution Prevention (GPPs) Notes and Guidance on the construction of SUDS (CIRIA C768). Please refer to the NetRegs website for guidance on waste management and see specifically their Waste Management Plan template for producing the site waste management plan.

Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012.

Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory services team in your local SEPA office at: 28 Perimeter Road, Pinefield, Elgin, IV30 6AF, Tel: 01343 547663.

SCOTTISH WATER have commented as follows:

See attached consultation response dated 17 September 2019.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
LH01_LP_01	Location plan



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:
23/02157/APP

Site Address:
**Land At St Andrews Terrace
Lhanbryde**

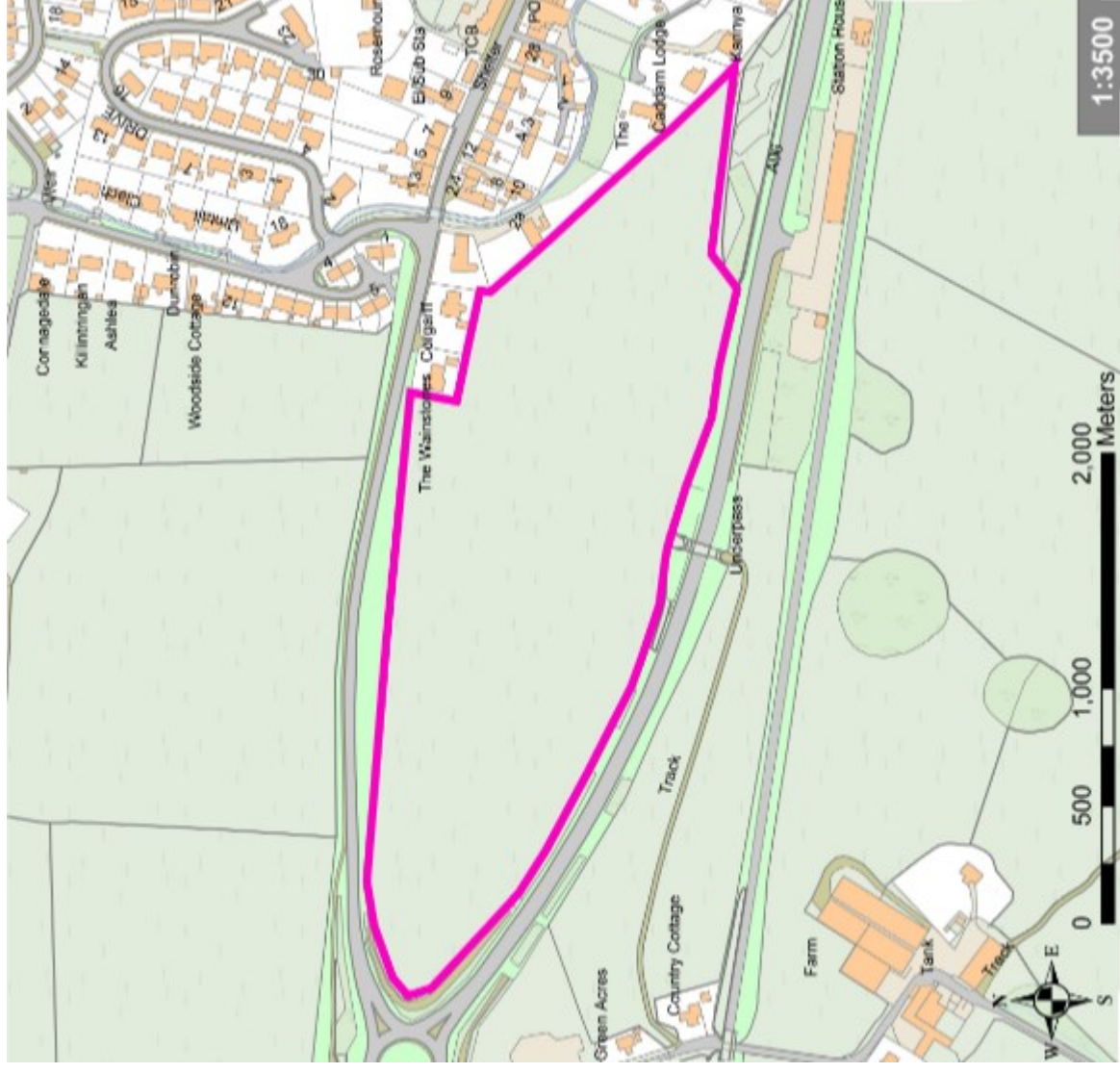
Applicant Name:
Springfield Properties PLC

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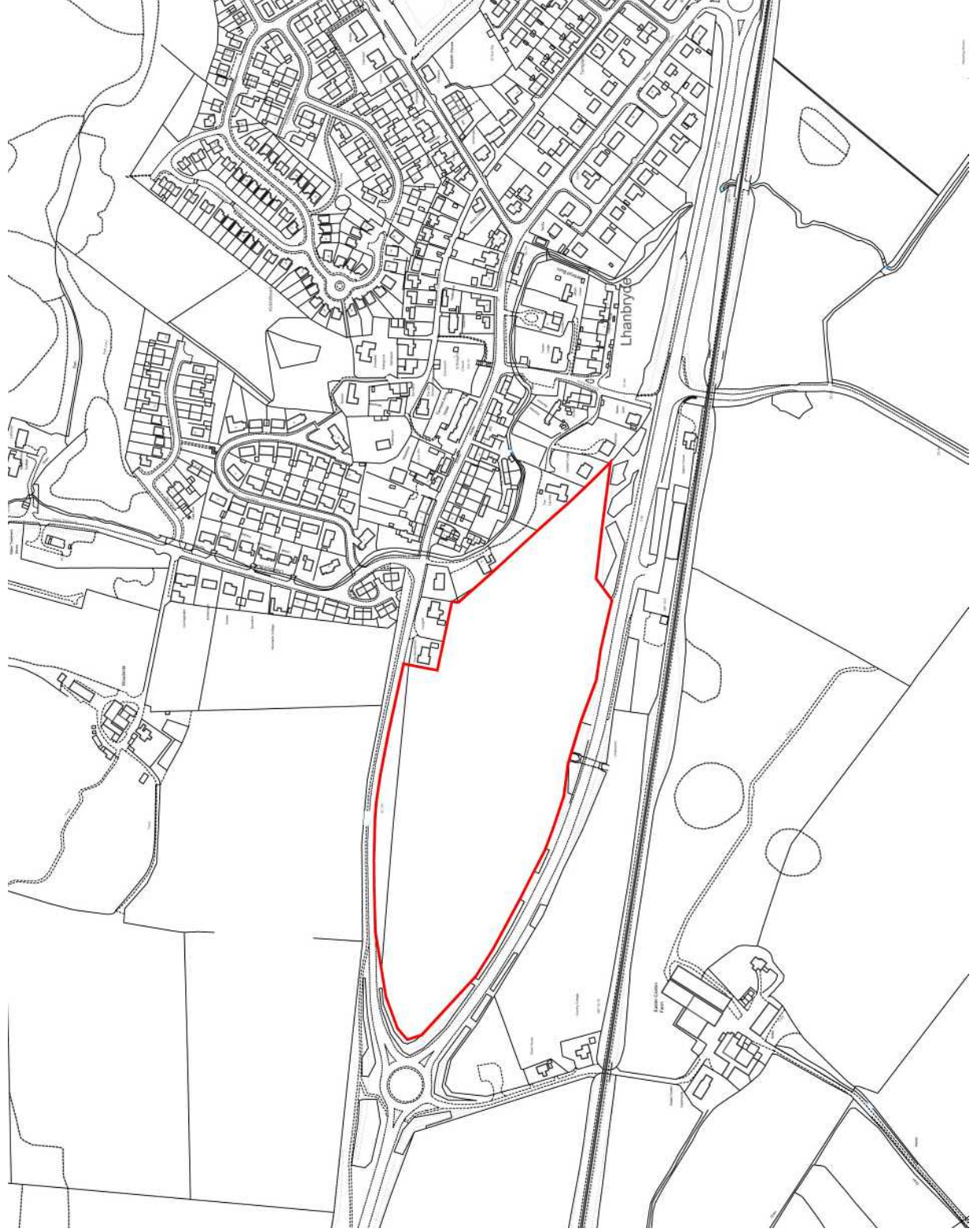
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Location Plan



Site Location



Adoption layout



PLANNING APPLICATION: 23/02157/APP

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

1 THE PROPOSAL

- This is an application under section 42 of the Planning Act, which seeks to vary the terms of the existing planning permission for a housing development to allow a proposed footpath to be provided prior to first occupation of any unit on site rather than prior to completion as currently approved.
- The proposal is to vary condition 19 of the original permission. This condition will become condition 20 of the new planning permission because of the condition relating to the time allowed to start works which is now required to be added as an express condition on all planning permissions which was not the case when the original application was issued.
- The original planning permission (19/01080/APP) was for 77 houses with associated access, parking, surface water drainage, a play park, kickabout pitch, footpaths and Landscaping. No other alterations to the terms of the planning permission are proposed.
- Work has yet to commence on site. The existing planning permission remains live until 14 April 2024.

2. THE SITE

- The site extends to 6.8ha and is on the western edge of Lhanbryde. The site is covered by the Lhanbryde R1 designation in the Moray Local Development Plan 2020.
- The site is bounded to the north by St Andrews Road and to the south by the A96(T).
- The proposed path that is the subject of this application runs along the boundary of the site with St Andrews Road.
- There are existing houses to the east of the site.
- The site is largely open grazing land and there is an existing cattle pass underneath the A96(T) which will be blocked up.
- There are mature trees along the roadside boundaries of the site.
- There is an existing burn running through the site that will be retained.
- There are significant changes in levels across the site. There is central dip and the land rises steeply to the east.
- There is a site (Meikle Coxtton Cottages) of archaeological interest to the south of the site.
- Areas in the north of the site and around the burn are identified on SEPA flood maps as at risk of surface water flooding.

- An area of the site in the north appears on the SEPA flood map as at Low (1 in 1000 years) risk of flooding and the site is adjacent to an area of medium (1 in 200 year) flood risk.
- There is a medium pressure gas pipeline to the north of the site.

3. **HISTORY**

19/01080/APP - Residential development and associated infrastructure at R1 St Andrews Terrace, Lhanbryde – approved by the Planning and Regulatory Services Committee – issued 14 April 2021.

4. **POLICIES**

MLDP

PP1 Placemaking
 PP2 Sustainable Economic Growth
 PP3 Infrastructure and Services
 DP1 Development Principles
 DP2 Housing
 EP1 Natural Heritage Designation
 EP2 Biodiversity
 EP5 Open Space
 EP8 Historic Environment
 EP12 Management and Enhancement Water
 EP13 Foul Drainage
 EP14 Pollution Contamination Hazards

NPF4

NPF1 - Tackling the Climate
 NPF2 - Climate mitigation and adaptation
 NPF3 - Biodiversity
 NPF4 - Natural Places
 NPF5 - Soils
 NPF6 - Forestry, woodland and trees
 NPF7 - Historic assets and places
 NPF13 - Sustainable transport
 NPF14 - Design, quality and place
 NPF16 - Quality homes
 NPF21 - Play, recreation and sport
 NPF18 - Infrastructure first
 NPF22 - Flood risk
 NPF23 - Health and safety

5. **ADVERTISEMENTS**

5.1 Advertised for neighbour notification purposes.

6. **CONSULTATIONS**

Transportation: No objection

Transport Scotland: No response at time of writing.

7. **OBJECTIONS-REPRESENTATIONS**

None.

8. **OBSERVATIONS**

8.1 Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended allows applicants to apply to develop land without compliance with conditions previously attached to a planning consent. In determining such an application, the Council, as Planning Authority can only consider the conditions subject to which planning permission should be granted and may:

- grant permission unconditionally (i.e. remove the conditions attached to the planning consent);
- grant permission conditionally with differing conditions; or
- refuse the application (i.e. keep the conditions attached to the planning consent).

8.2 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. National Planning Framework 4 (NPF) and the adopted Moral Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

8.3 The main planning issues are considered below:

8.4 **Section 42 application**

In considering a Section 42 application the planning authority can only consider the conditions that are the subject of the application although this does not preclude consideration of the overall effect of granting a new permission. The effect of granting a Section 42 application is the creation of a new planning permission and therefore all conditions of the previous consent must be reiterated in order to have effect. In this case it is recommended that the condition relating to the provision of a 2m wide footpath along St Andrews Road (condition 19 of the original permission) is varied as requested by the applicant and all the other conditions are reiterated unchanged.

8.5 **Environmental Impact Assessment**

The development was a 'schedule 2' development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 as it is an urban development where the site exceeds 0.5ha. The original application (19/01080/APP) was screened as not being an EIA development. The EIA Regulations do not specifically provide for a proposal to vary conditions of an earlier development. It is recognised that a Section 42 application is an application for planning permission and that the effect of granting it would be to grant a fresh permission for the whole development.

However, the current proposal does not alter the previously approved number of units, the layout or design. The current proposal to change the timeframe for providing the roadside footpath does not in itself introduce new or additional environmental impacts beyond those previously assessed and mitigated against. It is also noted that appropriate mitigation of environmental impacts forms part of the conditions of the existing permission which are to be reiterated.

- 8.6 **Principle of Development (MLDP policies PP3 & DP1 and NPF4 policy 13)**
The proposal is to allow an approved footpath along the frontage of St Andrews Road to be provided on first occupation of any unit within the development rather than on completion as currently approved. The applicant argues that the current wording would necessitate excessive outlay to comply with the conditions without the benefit of sales to cover that cost. The statement highlights a range of factors that have led to higher build costs and altered market conditions resulting in a need to ensure development is carried in the most effective manner possible. The original condition was recommended by the Transportation Manager and was imposed to ensure that there is adequate footpath provision for the development and avoid road safety conflicts on St Andrews Road. The Transportation Manager has no objection to the proposed change. The proposal will ensure that the footpath is in place prior to any residents occupying the development and potentially making use of the footpath. This still achieves the original aims of the condition. It is noted that several other conditions (original conditions 3, 4, 12, 24, 25 & 30) of the existing consent already use 'first occupation' as a trigger. The proposal will ensure that the development still complies with MLDP policies PP3 & DP1 and NPF4 policy 13 in relation to the adequate and timely provision of active travel connections.
- 8.7 **Climate & Nature Crisis and Climate Mitigation (NPF4 policies 1, 2 & 3 & MLDP EP2)**
The original permission (19/01080/APP) was approved under the current LDP but prior to the adoption of NPF4. NPF4 policies 1 and 2 require significant weight to be given to the climate and nature crises in the assessment of all applications and requires climate mitigation from all development. In this case the proposal relates to an approved development. The proposal to change the timescale for the provision of a roadside footpath will not itself alter the impact of the development in relation to the climate or nature crises and will not alter the level of carbon emissions for the already approved development. The proposals are considered to comply with NPF4 policies 1 and 2.
- 8.8 NPF4 policy 3 requires all proposals for major developments to conserve, restore and enhance biodiversity. The original application was considered against MLDP policy EP2 which also requires development to create or enhance biodiversity. The approved plans include the protection of an existing high quality alkaline fen area and native species planting across the site and the provision of bat and bird boxes, gully pot ladders and hedgehog fencing. The current proposal will not impact on the approved biodiversity measures. The proposal is considered to comply with NPF4 policy 3.
- 8.9 **Remaining Conditions**
It is recommended that the remaining conditions of the original planning permission will be reiterated so that they continue to have effect.

Conclusion

The proposed variation of condition to allow for the approved roadside path to be provided on first occupation rather than completion of any unit in the development is considered to be acceptable in this instance. The Transportation Manager has no objection and the proposal accords with policy. No other changes are proposed. For the avoidance of doubt the recommendation reiterates all other conditions of the previous consent. It is recommended that planning permission is granted.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are: -

The proposal accords with the provisions of the development plan and there are no material considerations that indicate otherwise.

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